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15 **UNITED STATES DISTRICT COURT**

16 **NORTHERN DISTRICT OF CALIFORNIA**

17 **SAN JOSE DIVISION**

18

19 MARTIN VOGEL and KENNETH  
20 MAHONEY, on Behalf of Themselves  
and All Others Similarly Situated,

21 Plaintiffs,

22 v.

23 APPLE, INC., STEVEN P. JOBS, FRED  
24 ANDERSON, NANCY HEINEN, WILLIAM V.  
CAMPBELL, MILLARD S. DREXLER,  
ARTHUR D. LEVINSON, and JEROME P.  
25 YORK,

26 Defendants.

27 CASE NO.: C08-03123-JF

28 **CLASS ACTION**

**STIPULATION AND [PROPOSED]  
ORDER CONTINUING CASE  
MANAGEMENT CONFERENCE**

Date: September 4, 2009

Time: 10:30 a.m.

Judge: Hon. Jeremy Fogel

Dept: Ctrm. 3, 5th Floor

1 Plaintiffs Martin Vogel and Kenneth Mahoney (“Plaintiffs”) and Defendants Apple  
 2 Inc. (“Apple”), Fred D. Anderson, Steven P. Jobs, William V. Campbell, Millard S.  
 3 Drexler, Arthur D. Levinson, and Jerome B. York (collectively, the “Defendants”) hereby  
 4 stipulate as follows:

5 WHEREAS, on August 24, 2006, Plaintiffs filed a class action complaint before this  
 6 Court alleging that certain defendants violated the Securities Exchange Act of 1934 (the  
 7 “Exchange Act”), including § 10(b) and Rule 10b-5 thereunder, and § 20(a). That action was  
 8 entitled *Martin Vogel and Kenneth Mahoney v. Steven Jobs, et al.*, Case No. 5:06-cv-05208-JF  
 9 (N.D. Cal.) (the “Apple Backdating Action No. 1”), and concerning alleged practice of issuing  
 10 backdating stock options;

11 WHEREAS, on October 24, 2006, New York City Employees' Retirement System  
 12 (“NYCERS”) moved for their appointment as Lead Plaintiff of the Apple Backdating Action No.  
 13 1 pursuant to 15 U.S.C. § 78u-4;

14 WHEREAS, on January 19, 2007, this Court appointed NYCERS as Lead Plaintiff of that  
 15 litigation;

16 WHEREAS, on March 23, 2007, NYCERS filed, as Lead Plaintiff, its Consolidated  
 17 Complaint and asserted claims under §§ 14(a) and 20(a) of the Exchange Act and the common  
 18 law duty of disclosure. The Consolidated Complaint did not assert any claims for Defendants’  
 19 alleged violations of §10(b) of the Exchange Act;

20 WHEREAS, on November 14, 2007, this Court granted Defendants’ motion to dismiss the  
 21 Consolidated Complaint on the ground, *inter alia*, that NYCERS failed to plead standing to bring  
 22 a direct claim (“Dismissal Order”);

23 WHEREAS, this Court granted NYCERS leave to amend its complaint but held that  
 24 NYCERS could only amend for the purpose of attempting to plead a derivative claim, not a direct  
 25 class action claim;

26 WHEREAS, on December 14, 2007, NYCERS filed a motion for leave to file a First  
 27 Amended Consolidated Class Action Complaint that contained direct class action claims for  
 28 alleged violations of § 10(b) of the Exchange Act;

1           WHEREAS, on May 14, 2008, this Court denied NYCERS's motion for leave to file an  
2 amended complaint ("Denial Order");

3           WHEREAS, on June 12, 2008, this Court entered Judgment for defendants ("Judgment");

4           WHEREAS, on June 17, 2008, NYCERS filed its Notice of Appeal of the Dismissal  
5 Order, the Denial Order and subsequent Judgment ("NYCERS's Appeal");

6           WHEREAS, Plaintiffs filed this action ("Apple Backdating Action No. 2") on June 27,  
7 2008, alleging that Defendants violated § 10(b) of the Exchange Act and Rule 10b-5 thereunder  
8 and § 20(a) of the Exchange Act by, *inter alia*, issuing backdated stock options to themselves and  
9 other Apple employees;

10          WHEREAS, Plaintiffs and Defendants agreed that if this litigation were to go forward  
11 prior to resolution of NYCERS's appeal(s) of the Apple Backdating Action No. 1, there was a  
12 risk of duplicative litigation regarding Defendants' alleged backdating and alleged violations of  
13 the Exchange Act, and that this risk could result in a waste of judicial resources;

14          WHEREAS, pursuant to the parties' stipulation, on July 22, 2008, this Court entered an  
15 Order staying this action pending the resolution of NYCERS's Appeal;

16          WHEREAS, on March 10, 2009, this Court continued the Case Management Conference  
17 set for March 6, 2009, to September 4, 2009, at 10:30 a.m.;

18          WHEREAS, the NYCERS's Appeal has been fully briefed and oral argument is currently  
19 scheduled before the Ninth Circuit on October 7, 2009;

20          WHEREAS, Plaintiffs and Defendants agree that it would be premature and a waste of  
21 judicial resources to hold the status conference prior to oral argument and the Ninth Circuit's  
22 ruling on the NYCERS's Appeal;

23          //

24          //

25          //

26          //

27          //

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1 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED:

2 The Case Management Conference should be continued, if this Court is so  
3 amenable, for at least 120 days from Friday, September 4, 2009, to Friday, January 8, 2010,  
4 or a later date as ordered by the Court.

5 IT IS SO STIPULATED.

6 Dated: September 2, 2009

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27 Attorneys for Plaintiffs

28 Dated: September 2, 2009

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35 Attorneys for Defendant Apple Inc.

1 Dated: September 2, 2009

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Attorneys for Defendants Steven Jobs, William V. Campbell, Millard S. Drexler, Arthur D. Levinson, and Jerome P. York

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Dated: September 2, 2009

Jerome C. Roth  
Yohance C. Edwards  
Genevieve A. Cox  
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Attorneys for Defendant Fred D. Anderson

I, Robert D. Tronnes, am the ECF User whose ID and password are being used to file this Stipulation and [Proposed] Order Continuing Case Management Conference. In compliance with General Order 45, X.B., I hereby attest that Patrice L. Bishop, Douglas R. Young, and Yohance C. Edwards have concurred in this filing.

By: /s/ Robert D. Tronnes  
Robert D. Tronnes

1                   **[PROPOSED] ORDER**

2                   Pursuant to the stipulation of the parties, and for good cause shown, IT IS HEREBY  
3 ORDERED THAT:

4                   The Case Management Conference scheduled for Friday, September 4, 2009, at  
5 10:30 a.m. is hereby continued to Friday, January 8, 2010, at 10:30 a.m.

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7 Dated: 9/3/2009

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Honorable Jeremy Fagel  
United States District Court Judge

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